IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

R.S.A. No. 54 of 2005
Date of Decision: 27.1.2009

Karnail Singh.

..... Appellant through Shri L.N.Verma and Shri Ashok Verma, Advocates.

Versus

M/S Kalra Brothers, Sirsa.

..... Respondent through Shri Jaswant Jain, Advocate.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

....

Mahesh Grover,J.

By way of the present Regular Second Appeal, the appellant-defendant has prayed for setting aside of judgments and decrees dated 4.10.2002 and 3.9.2004 passed respectively by the Civil Judge (Junior Division), Sirsa (hereinafter described as `the trial Court') and the Additional District Judge, Sirsa (referred to hereinafter as `the First Appellate Court') whereby the suit of the respondent-plaintiff was decreed and his appeal was dismissed.

Briefly stated the facts of the case are that the respondent, who is engaged in the business of Commission Agent, filed a suit against the appellant for recovery of Rs.97,850/- along with interest pendente lite and

future at the rate of 2% per month till the date of realisation of the whole amount, on the basis of bahi entries (accounts books). It was pleaded that the appellant had taken a sum of Rs.56,665/- as advance in cash from the respondent between the period from 8.6.1996 to 31.12.1996 on different dates after putting his signatures in its accounts books. As per the respondent, agricultural produce worth Rs.28743.60 was brought by the appellant on 8.11.1996 and 30.12.1996 for selling the same through it and the said amount was duly credited in his account. It was the further case of the respondent that the appellant had paid another sum of Rs.12872.80 in cash on 2.1.1997, which was also credited to his account. The appellant is said to have settled his account on 3.1.1997 and took a sum of Rs.27951.40 in cash from the respondent and in this way, a sum of Rs.43,000/- became due from him for which a bahi entry was made and the same was signed by him. The respondent had averred that from 13.1.1997 to 17.3.1997, the appellant had taken advance amount of Rs.9900/- from the respondent and signed the accounts books. Again, he, during the period from 7.4.1997 to 30.4.1997, took advance of Rs.4500/- from the respondent on different dates and entries in the bahi were made to that effect which were duly signed by him. The respondent pleaded that at the time of starting of the dealings, the appellant had agreed to pay interest at the rate of 2% per month on the advance money. In this way, the appellant was stated to have taken a total amount of Rs.57400/- as advance from the respondent and till 23.12.1999, a sum of Rs.40,450/- accrued thereon as interest. The respondent gave a legal notice to the appellant to pay the said amounts, but

he failed to do so and hence, it filed the instant suit for recovery.

In his written statement, the appellant averred that the respondent had no licence to indulge in money lending business and denied that he had ever taken any loan. He further pleaded that bahi entries had been manipulated to take his undue advantage. He denied his signatures on the bahi entries and pleaded that he is a marginal farmer and that he had been selling his produce to the respondent, but had not taken any loan.

On the basis of the pleadings of the parties, the following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to recover the amount of Rs.97850/- from the defendant on the grounds alleged?OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to any interest, if so, from what rate and from what date?OPP
3. Whether the suit is not maintainable due to non-production of registration of the firm?OPD
4. Whether the plaintiff firm has no money lending licence?OPD
5. Relief.

The trial Court, on appraisal of the entire evidence on record, decided issue nos. 1,2 and 3 in favour of the respondent, whereas issue no.4 was decided in favour of the appellant. Consequently, the suit was decreed for recovery of the aforesaid amount along with interest at the rate of 6% per annum from the date of its filing till realisation.

Feeling aggrieved, the appellant filed an appeal which was

dismissed by the First Appellate Court and the findings of the trial Court were affirmed.

Hence, this appeal.

Learned counsel for the appellant very strenuously argued that bahi entries in question have not been proved in accordance with law. He contended that the same had allegedly been written by two persons, i.e., Som Nath, brother of the respondent and Prem Chand, their munim, who have not stepped into witness box in support of them and they have merely been put on record in the shape of photostat copies and the original thereof were never produced. On the basis of this, he argued that the bahi entries could not have been relied upon for making liable the appellant to pay the amount in question. In support of these contentions, learned counsel for the appellant relied upon Sait Tarajee Khimchand and others Versus Yelamarti Satyam and others, AIR 1971 S.C. 1865 and P.Sood & Co. Versus Peerchand Misrimalji Bhansali, 2005(3) R.C.R.(Civil) 64 (Madras).

Learned counsel for the appellant further contended that the amount of Rs.97850/- which was sought to be recovered by the respondent, comprised of principal amounting to Rs.57400/- and interest amounting to Rs.40,450/- calculated at the rate of 24% per annum. He submitted that the Courts below have decreed the suit for recovery of Rs.97850/- and granted 6% future interest on the decretal amount from the date of the filing of the suit till realisation, which was not permissible under the law, as, if at all, the suit had to be decreed, only principal amount could have been allowed to be recovered along with future interest at the rate of 6% per annum and

nothing was payable on the amount interest. In support of this contention, he placed reliance on a Division Bench judgment of this Court in Devinder Kumar and another Versus Syndicate Bank and others, 1994(1) P.L.R. 1.

It was also contended by the learned counsel for the appellant that the signatures of the appellant were purportedly got compared with those available on the photostat copies of the bahi entries,which could not have been done and since the signatures as well as the documents have not been proved in accordance with law, no inference can be derived in favour of the respondent. To support this contention, he relied on Sh.Surjit Rai Versus Sh.Prem Kumar Khera and others, 1995(2) P.L.R. 140 (S.B.).

On the other hand, learned counsel for the respondent contended that the bahi entries had been proved in accordance with law. He referred to the provisions of Order 7 Rule 17 of the C.P.C. to contend that the accounts books can be placed on record by bringing the originals and the Court could either itself or through an officer appointed by it, compare the copy with the original and cause the copy to be filed and return the original to the owner. He submitted that since the certified copies of the bahi entries have been placed on record as Exhibits P1 to P43 after the same having been compared with the originals, the onus had been satisfactorily discharged. In view of this, he urged that the judgments and decrees of the Courts below are perfectly in order.

I have thoughtfully considered the respective contentions/ submissions and have minutely perused the record.

The first and foremost question that has to be dealt with is as to

whether the bahi entries have been proved in accordance with law. If the answer to this question is in affirmative, then the findings of the Courts below do not warrant any interference,but if the conclusion is otherwise, then the suit of the respondent necessary has to fail.

It is the case of the appellant that the photostat copies of the bahi entries were merely marked and were not proved in accordance with law, while the respondent has contended that the same had been produced on record after complying with the provisions of Order 7 Rule 17 of the C.P.C. and, therefore, he successfully discharged his onus.

A perusal of the record shows that each of documents Exhibits P1 to P43 bears a stamp which reads in English - “aforesaid photostat is correct copy of the original bahi” and beneath it, there are some initials, though it is not clear as to whether these initials are of the respondent or of the Court. Be that as it may, the Court is to see whether these documents were actually proved.

The record shows that these documents were marked as Exhibits on 3.5.2001 when the statement of PW1-Amar Nath was recorded. He had testified therein that he had brought the original bahi in the Court on that day. He also stated that Som Nath and Prem Chand were alive and that the entries had been made in their hands and that he was familiar with their handwriting and recognized the same. Subsequently, in the year 2002, when the matter regarding evidence was yet to be concluded, the trial Court noted in its order dated 4.6.2002 that the respondent had produced Rokar Bahi for the year 1997-98 but he stated that Bahi for the year 1996-97, which was

required to be produced, had been lost on 19.4.2002. It was also noted that in support of his statement, the respondent had produced a copy of D.D.R. Registered in P.S., City, Sirsa on Rapat No.22 dated 25.4.2002.

Rule 17 of Order 7 of the C.P.C. reads as under:-

> "17. **Production of shop-book**.- (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act,1891, (18 of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.
>
> **(2) Original entry to be marked and returned:-** The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed."

It is apparent from the afore-quoted provisions of law that the same provide a procedure how the documents can be brought on record, it does not mean that the standard and manner of proof as required to prove a document under the provisions of Section 62 of the Indian Evidence Act can be dispensed with. The documents were merely brought on record and touted as exhibits without the necessary standard of proof having been applied to them. The author of the bahi entries was not examined and

merely photostat copies which allegedly contained the signatures of the appellant were exhibited.

Moreover, the respondent, while appearing in the witness box has admitted that the entries are in the hands of his brother and their Munim, who were alive, but strangely enough, no explanation has been given as to why they were not examined in support of the bahi entries.

In Sait Tarajee Khimchand and others's case (supra), their Lordships of the Supreme Court held as under:-

> "The mere marking of an exhibit does not dispense with the proof of documents. It is common place to say that the negative cannot be proved."

Even the signatures of the appellant on the photostat copies could not have been examined as was done by the respondent by producing a handwriting expert. In Sh.Surjit Rai's case (supra), a learned Single Judge has held as under:-

> "..... In my view, signatures cannot be compared from the photocopy of the agreement because in these days of advance technology, signatures of a person can be lifted from one document and put on another document by super imposition."

No attempt was made by the respondent to prove the bahi entries by adducing the secondary evidence once the original bahi had been lost as stated by him.

The provisions of Order 7 Rule 17 of the C.P.C. are merely enabling provisions by which a document can be brought on record, but

under no circumstance, the standard of proof can be dispensed with. A document has to be necessarily proved in accordance with law.

It is, therefore, clear in the instant case, that the bahi entries were not proved as per the provisions of the Indian Evidence Act and the respondent cannot derive any solace or strength from the signatures of the appellant on the photostat copies thereof as the same are impermissible and do not conform to the requirement of standard of proof.

Accordingly, I am of the opinion that the following question is of law arise in the present appeal:-

> "(a) Whether the party relying upon entries in an account book must produce the original account book in the court and if the original account book is not produced before the court, whether a photocopy of the entries contained in that account book can be entertained in evidence?
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> (b) Whether the entries in the account book can be proved only by examining as witnesses the persons in whose hands the same have been made?
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> © Whether the entries in the account books can be exhibited in the statement of a witness who has not recorded the same?
>
> (d) Whether disputed signatures on the entries in the account book can be compared with the admitted signatures from the photocopy of the account book?
>
> (e) Whether mere marking of a document as a exhibit is sufficient to dispense with its formal proof?"

The aforementioned questions stand answered as above.

The appeal is, therefore, allowed; the impugned judgments and decrees are set aside and the suit of the respondent is dismissed.

January 27 ,2009 **(Mahesh Grover)**
"SCM" **Judge**